P.R. No. 222/06
Presented by Shri Sushil Agrawal
dated 27/3/2006

CIS

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

Civil Revision No. 44 /2006

Single Bench

APPLICANT :
Defendant No.1

Ramesh Chandravanshi,
S/o Shri Latel Chandravanshi,
Aged about 38 years,
R/o Civil Lines, Kawardha,
Tahsil- Kawardha,
District- Kabirdham (C.G.).

-Versus-

RESPONDENT : 1.
Plaintiff

Juthel Singh,
S/o Dukhu Singh,
Aged about 60 years,
R/o Gurugovind Singh, Ward No.2,
P.S. and Tahsil- Kawardha,
District- Kabirdham (C.G.).

RESPONDENT : 2.
Defendant No.2

State of Chhattisgarh,
through Collector,
District- Kabirdham (C.G.).

CERTIFIED COPY
27/3/06
BILASPUR

CIVIL REVISION UNDER SECTION 115 OF THE CODE OF CIVIL PROCEDURE.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(46)

आदेश पत्रक

मामला क्रमांक C.R. No. 44 सन् 2006

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	02/02/2007 Shri V.C. Ottalwar, counsel for the applicant/defendant No.1. Shri P.P. Sahu, counsel for non-applicant No. 1. Shri Akhil Agrawal, Panel Lawyer for the State/non-applicant No. 2. Learned counsel for the parties pray that this Civil Revision may be finally heard today and disposed of. Accordingly, the Civil Revision was finally heard today. Applicant/defendant No. 1 is aggrieved by order dated 13.3.2006 passed by Civil Judge, Class-II, Kabirdham in Civil Suit No. 172-A/2005 whereby the application filed by the applicant/defendant No. 1 under Order 7 Rule 11 of C.P.C. was dismissed. Brief facts are that the respondent No. 1/plaintiff filed Civil Suit No. 172-A/2005 in the Court of Civil Judge, Class-II, Kabirdham for declaration and permanent injunction. It was pleaded that the respondent/plaintiff had applied for grant of a permanent lease over the suit land which application was pending before the State Government. According to the plaintiff, on 14.12.2005, the applicant/defendant started construction of the house over the suit land which gave him the cause of action to file a suit for declaration that the plaintiff was entitled to get the suit land on permanent lease, that the construction being done by the defendant over the suit land was illegal and also to restrain the defendant by a permanent injunction from doing construction work over the suit land. Although, the State Government was impleaded as a formal party, yet respondent/plaintiff specifically pleaded that no relief was being claimed against the State Government. An application was filed under Order 7 Rule 11 of C.P.C. by the defendant/applicant alleging that no cause of action arose in favour of the plaintiff and therefore, the plaint was liable to be rejected under Order 7 Rule 11 of C.P.C.	

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक C.R.No.44 **सन्** **2006**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The respondent/plaintiff opposed the application. Learned Civil Judge, Class-II, Kabirdham rejected the application under Order 7 Rule 11 of C.P.C. merely on the ground that upon a plain reading of the plaint, it appears bona fide that cause of action arose in favour of the plaintiff.

Having heard rival contentions, I am of the considered opinion that the impugned order is patently illegal, reflects complete lack of application of judicial mind to the pleadings and is liable to be set aside. It is well settled that for ascertaining whether cause of action arose in favour of the plaintiff for filing the Civil Suit, the allegation in the plaint alone are to be looked into. It is not disputed that permanent lease of the suit land has not been granted to the plaintiff, his application still pending before the State Government. In that view of the matter, the State Government and not the plaintiff was aggrieved by the construction, if any, by the defendant on suit land. No cause of action could thus be said to have arisen in favour of the non-applicant/plaintiff for filing the Civil Suit against the defendant/applicant. Under Order 7, sub clause (a) Rule 11, the plaint shall be liable to rejection where it does not disclose a cause of action. No cause of action arose in favour of the plaintiff for filing a suit and claiming reliefs as mentioned in the plaint. The plaint was thus clearly liable to be rejected under Order 7 Rule 11 of the C.P.C.

In that view of the matter, the Civil Revision is allowed. The impugned order dated 13.3.2006 passed by the Civil Judge, Class-II, Kabirdham in Civil Suit No. 172-A/2005 is set aside. Plaint in Civil Suit No. 172-A/2005 is rejected.

In view of above, M.(C).P. No. 507/2006 for stay, I.A. No. 1138/2006 for urgent hearing and I.A. No.2325/2006 for hearing the case out of turn stand disposed of.

There shall be no order as to costs.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Kvr